

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
MICHELLE LOSCALZO,

Plaintiff,

-against-

NEW ROC MOTORCYCLES, LLC,

Defendant.
----- x

: 07 Civ. 3046 (CLB)

:
: **DECLARATION OF**
: **JASON BERNBACH IN**
: **OPPOSITION TO**
: **DEFENDANT’S MOTION**
: **FOR PARTIAL SUMMARY**
: **JUDGMENT**
: _____

: FILED VIA ECF
:

JASON BERNBACH declares under penalty of perjury, pursuant to 28 U.S.C. §1746,
that the following is true and correct:

1. I am co-counsel for plaintiff Michelle Loscalzo (“Plaintiff”) in the above-captioned
action, and am fully familiar with the facts and circumstances herein. I submit this declaration in
opposition to the motion for partial summary judgment of defendant New Roc Motorcycles, LLC
(“Defendant”).

2. Annexed hereto are true and correct copies of the following documents:

Exhibit 1: Relevant excerpts from the transcript of the deposition testimony of plaintiff,
taken on November 9 and December 3, 2007;

Exhibit 2: Relevant excerpts from the transcript of the deposition testimony of John
Meskunas, taken on November 7, 2007;

Exhibit 3: Relevant excerpts from the transcript of the deposition testimony of Adrianna
Davidson, taken on November 27, 2007;

Exhibit 4: Relevant excerpts from the transcript of the deposition testimony of Patricia

Massa, taken on November 16, 2007;

Exhibit 5: Relevant excerpts from the transcript of the deposition testimony of Wayne Sforza, taken on December 3, 2007;

Exhibit 6: Relevant excerpts from the transcript of the deposition testimony of Anthony DeSimone, taken on November 26, 2007;

Exhibit 7: Relevant excerpts from the transcript of the deposition testimony of Albert Griffo, taken on November 26, 2007;

Exhibit 8: Compendium of (a) July 13, 2007 letter from Maggie Kramer-Feldman To Whom It May Concern, and (b) earnings statements for plaintiff from Westchester BMW, Inc.;

Exhibit 9: Excerpt from defendant's Employee Handbook regarding "Probationary Employment";

Exhibit 10: Affidavit of Anthony DeSimone, sworn to on November 1, 2007;

Exhibit 11: Affidavit of Albert Griffo, sworn to on October 23, 2007;

Exhibit 12: Compendium of (a) excerpt from defendant's Employee Handbook containing "Corporate Policy on Harassment," and (b) excerpt from defendant's revised Employee Handbook containing "Corporate Policy on Harassment";

Exhibit 13: Collection of e-mail exchanges between plaintiff and Patricia Massa covering the dates February 23 and 24 and March 2 and 3, 2007;

Exhibit 14: Compendium of (a) customer lists maintained by plaintiff, and (b) December 2006 and January 2007 commission summaries for plaintiff;

Exhibit 15: Affidavit of Marc Rios, sworn to on October 23, 2007;

Exhibit 16: September 21, 2006 Discipline Documentation Form;

Exhibit 17: December 20, 2006 memorandum from Wayne Sforza to plaintiff re: “Adherence to Sales Department Policies and Procedures”;

Exhibit 18: January 5, 2007 memorandum from Wayne Sforza to plaintiff re: “Failure to Properly Process Deal Paperwork and Customer Deposit,” with attached “Deposit Payments” form and copy of credit card receipt;

Exhibit 19: January 27, 2007 “Memo to file of Mikki Loscalzo”;

Exhibit 20: February 4, 2007 “Memo to file of Mikki Loscalzo”;

Exhibit 21: September 3, 2006 Discipline Documentation Form; and

Exhibit 22: February 20, 2007 letter from Jeffrey M. Bernbach to John Meskunas;

Exhibit 23: Compendium of (a) December 11, 2007 letter from Jeffrey M. Bernbach to Mary Ellen Donnelly; and (b) December 20, 2007 letter from Jeffrey M. Bernbach to Randi Feldheim; and

Exhibit 24: December 21, 2007 letter from Randi Feldheim to Jeffrey M. Bernbach, with attachments relating to COBRA payments for plaintiff.

3. For the reasons set forth above and in her accompanying submissions, plaintiff respectfully requests that the Court deny defendant’s motion for partial summary judgment in its entirety.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: White Plains, New York
January 10, 2008

s/ Jason Bernbach
JASON BERNBACH (JLB-3392)

DUE TO SIZE LIMITATIONS
EXHIBITS FILED IN HARD COPY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Declaration of Jason Bernbach In Opposition to Defendant's Motion for Partial Summary Judgment, with exhibits annexed thereto, was served by Federal Express on Putney, Twombly, Hall & Hirson, attorneys for defendant, 521 Fifth Avenue, New York, New York 10175, on the 10th day of January 2008.

s/ Jason Bernbach
Jason Bernbach (JLB-3392)